acknowledgment. The court in the principal case seems justified in construing the statute so as to secure better means of obtaining satisfactory evidence that the one making the acknowledgment is the same person described in the instrument.

AUTOMOBILES—CONTRIBUTORY NEGLIGENCE OF THE GUEST IN FAILING TO WARN THE DRIVER OF IMPENDING DANGER.—The plaintiff was riding as a guest in the defendant's automobile. The windshield of the car was frosted so that neither was able to see that a crossing was blocked by a standing train until too late to avoid collision. The plaintiff had warned the defendant of the excessive speed at which he was driving, but testified that he did not know whether or not the defendant had heard his protest. The plaintiff knew the position of the railroad crossing, but did not remonstrate with the defendant in regard to the manner in which he was approaching it. *Held,* that the plaintiff was guilty of contributory negligence as a matter of law. Failure on the part of the guest to see that the driver is keeping a proper lookout or to protest the negligent manner in which the car is being driven will bar a recovery from the driver in case of injury. *Howe* v. *Corey* (Wis., 1920), 179 N. W. 791.

The driver of an automobile owes a duty to his invited guest to exercise ordinary care not to increase the danger ordinarily incident to driving; and if he fails to exercise such duty he is liable for the injury proximately resulting. *Perkins* v. *Galloway,* 198 Ala. 658, affirming 194 Ala. 265; *Beard* v. *Klusmeier,* 158 Ky. 153. And it seems that the guest, likewise, owes a duty to use reasonable care for his own safety. *Penn. Ry.* v. *Henderson,* 179 Fed. 577. But what does this duty require of the guest? The Indiana court has held that it is not necessary for him to jump out of the car. *Union Traction Co.* v. *Love,* 180 Ind. 442. Nor is he required to ask permission to get out. *Turney* v. *United Rys. Co. of St. Louis,* 155 Mo. App. 513. And the Rhode Island court does not even require the guest to *protest* when the car is being driven at an excessive speed. *Herman* v. *Rhode Island Co.,* 36 R. I. 447. However, the principal case would seem to place a burden upon the guest not only of protesting an excessive rate of speed but also of continuing to protest until he is certain that his complaints have come to the knowledge of the driver. Furthermore, he must remonstrate with the driver in regard to the manner in which each new situation of danger is approached in order not to assume the risk of possible resulting injury. It appears to the writer that such a rule is quite contrary to the dictates of sound reason and common experience. It, in effect, places a burden upon the guest of electing between becoming a "back seat driver" or his own insurer against all the perils encountered during the drive.

CARRIERS—LIABILITY FOR LOST BAGGAGE—PASSENGER FROM ADJACENT FOREIGN COUNTRY.—The plaintiff was on a journey from Canada to El Paso, Texas, traveling on a coupon ticket to El Paso and return, with a stop-over privilege of which she availed herself at San Antonio. She checked her

trunk from there to El Paso, on which trip it was lost. When she purchased her ticket at Timmins, Ontario, she was not told of any limitation of the carrier's liability, and it does not appear that any notice appeared on the ticket. The company claims that she was on an interstate journey, and that since it had duly filed with the Interstate Commerce Commission and published a tariff limiting liability to $100 unless passenger declared a higher value and paid excess charges, it is liable only for that amount. The plaintiff sued in a Texas court for the full value, which was $500. The Texas Court of Appeals allowed full recovery. *Held*, that she is entitled only to $100. *Galveston, Harrisburg & San Antonio Railway Co.* v. *Woodbury* (U. S. Supreme Court, Dec. 13, 1920).

For history of the development of the right of a carrier to limit liability, see Law Review articles cited in 17 MICH. L. REV. 183. The Act to Regulate Commerce applies to "passengers and property" expressly in three situations: where the passenger is traveling from one state to another, where he is traveling from a point in the United States to another point in the United States through a foreign country, and where he is traveling from a point in the United States *to* an adjacent foreign country. Before the Carmack Amendment was passed it had been held that a common carrier could contract to exempt himself from all liability except for losses caused by his own negligence. *R. Co.* v. *Lockwood*, 17 Wall. 357. And an agreement as to valuation of property is valid, and carrier's liability is restricted to that value, not by virtue of a contract, but by estoppel. *Hart* v. *Penn. Rd.*, 112 U. S. 331. It was held in *Matter of Released Rates*, 13 I. C. C. R. 550, that the Hepburn Act with the Carmack Amendment made carriers liable for losses caused by them, thus stipulating that the carrier could not stipulate to exempt himself from liability for losses due to his own negligence; and that although he could limit recovery to an honestly agreed valuation, even where the loss was due to his own negligence, *Hart* v. *Penn. Rd.*, *supra*, yet where the valuation was only an arbitrary attempt to limit recovery to a specified amount, regardless of value, "the law will not countenance so obvious a subterfuge." The Act superseded all state legislation on the subject, leaving the shipper only the rights he had had under existing Federal laws. *Adams Express Co.* v. *Croninger*, 226 U. S. 491. Attempts to limit liability for losses due to negligence are void (*Boston & Maine Rd.* v. *Piper*, 246 U. S. 439), but the utmost freedom in limiting liability to an agreed valuation has been allowed, holding the shipper to the agreed valuation, where both shipper and carrier know that it bears no relation to the real value, even though loss is due to carrier's negligence. *Pierce Co.* v. *Wells, Fargo & Co.*, 236 U. S. 278. The Carmack Amendment applies to baggage. *Boston & Maine R.* v. *Hooker*, 233 U. S. 97. The Cummins Amendment, 38 STAT. 1196, passed shortly after the *Pierce* case, *supra*, was decided, applied to baggage, but as amended, 39 STAT. 441, it does not, as is said in the principal case, *Culbreth* v. *Martin*, 103 S. E. 374. Justice Brandeis, in his opinion in the principal case, follows *Boston & Maine R.* v. *Hooker*, *supra*, which holds that although the passenger did not know of the limitation of liability in the tariffs of the carrier filed with the Inter-

state Commerce Commission, yet if such stipulation in the tariffs limits liability for loss of baggage to $100 if no other valuation is declared, and the regulations are observed, and the passenger makes no declaration, he cannot recover more than the $100. However, the dissenting opinion by Justice Pitney, in which he says that the formula of rates filed does not constitute a binding contract without the consent of the passenger or shipper, and that there is no basis for estoppel, as in the *Hart* case, *supra*, seems better law. *Homer* v. *Railroad*, 42 Utah, 15; *St. Louis, I. M. & S. Ry. Co.* v. *Faulkner*, 111 Ark. 430. In *Ferris* v. *Minneapolis & St. L. Ry. Co.*, 173 N. W. 178, in a baggage case arising under a state statute similar to the Hepburn Act, it was likewise held that there must be a valid contract fairly assented to by the passenger, and that the contract must be a reasonable limitation, the burden of proof being on the carrier to prove the contract. At any rate, to apply the result of the decisions to one traveling from Canada is carrying a bad thing too far. And to say that the Act meant to include travelers from an adjacent foreign country, as well as those to such country, it is submitted, is judicial legislation. True, in *International Paper Co.* v. *D. & H. Co.*, 33 I. C. C. 270, as Justice Brandeis says, the Commission placed that construction on the Act, but that controversy concerned a difference in rates between Canada and the United States, and the Commission held that it had authority over all carriers within the limits of the United States, without regard to direction of shipments. Yet it held the rate established by the Canadian Commission to be reasonable, and that comity demanded that it be not changed. *T. & P. Ry. Co.* v. *I. C. C.*, 162 U. S. 197, cited, says, in a *dictum*, that the Act was meant to apply to the whole field of commerce except intrastate, but this was not necessary to the decision. But perhaps this decision, like that in the *Pierce* case, *supra*, will agitate better legislation on this matter.

CONSTITUTIONAL LAW—CONCURRENT POWER UNDER THE EIGHTEENTH AMENDMENT.—Habeas corpus proceedings against sheriff for detaining plaintiff, who was arrested for violating the prohibition law of the state. Plaintiff maintains that the Volstead Act superseded and abrogated all state laws on the subject, and hence there was no state law in existence. *Held*, the power of the state is equal to that of Congress in passing laws on this subject, so the state law was not abrogated. *Jones* v. *Hicks* (Georgia, 1920), 104 S. E. 771.

For a discussion of the meaning of "concurrent power" under the Eighteenth Amendment, see 19 MICH. L. REV. 329. The opinion in the principal case goes so far as to say that Congressional legislation cannot interfere with the enactment of any future legislation by the states to enforce prohibition. This gives to Congress and the states equal power. This suggests the analogy of concurrent jurisdiction exercised by states over the waters of a river forming the boundary between them. See *Wedding* v. *Meyler*, 192 U. S. 573; *Neilson* v. *Oregon*, 212 U. S. 315; *supra*, p. 331. But Justice White, in *Rhode Island* v. *Palmer*, 40 Sup. Ct. 486, said that the object of the second section of the amendment was to adjust the matter to our dual